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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MANUEL FIMBRES, ANDY DOHRER,
RYAN HOUSER, ABENS PONCE, and
ELIOT WARNER, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

v.

DREAMSTYLE REMODELING OF
CALIFORNIA, LLC, a Delaware limited
liability company; DREAMSTYLE
REMODELING OF CALIFORNIA, INC., a
California corporation; DREAMSTYLE
REMODELING, INC., a New Mexico
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 37-2022-00013690-CU-OE-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Date: May 17, 2024

Time: 9:00 a.m.

Judge: Hon. James A. Mangione

Dept.: C-75

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1 I. INTRODUCTION

2 Plaintiffs MANUEL FIMBRES, ANDY DOHRER, RYAN HOUSER, ABENS PONCE, and
3 ELIOT WARNER (hereinafter “Plaintiffs”) seek final approval of the Stipulation of Settlement of Class
4 and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide
5 valuable monetary relief for 730 Settlement Class Members employed by Defendant Dreamstyle
6 Remodeling of California, LLC, Defendant Dreamstyle Remodeling of California, Inc., and Dreamstyle
7 Remodeling, Inc. (“Defendants”) during the Class Period. Plaintiff and Class Counsel also seek approval
8 of a payment of Attorneys’ Fees in the amount of \$484,375.52 comprised of \$454,375.52 (one-third of
9 the Gross Settlement Amount) and Attorneys’ Expenses of up to \$30,000.00 for reimbursement of
10 actually incurred litigation expenses.²

11 An objective evaluation of the proposed settlement of \$1,363,126.56 (“Gross Settlement
12 Amount”) confirms the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The
13 Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced
14 counsel, guided by the wisdom and experience of Steven Serratore, Esq. JCL Dec., ¶ 10. Plaintiff
15 estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately
16 **\$764,251.04**, with **\$573,188.28** allocated to Non-Exempt Piece Rate Class and **\$191,062.76** allocated
17 to Non-Exempt Hourly Rate Class, an average Individual Settlement Payment of **\$1,046.92**, high
18 payment of **\$10,738.02** and low payment of **\$37.03**. Aggrieved Employees will receive an estimated
19 average gross payment of **\$28.03**, high payment of **\$129.92**, and low payment of **\$1.71**. Declaration of
20 Madely Nava (“Apex Dec.”), ¶¶ 14-17.

21 The relief offered by the Settlement is immediate and is particularly impressive when viewed
22 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*). As
23 discussed below, the proposed Settlement satisfies all criteria for final settlement approval under
24 California law and falls well within the range of reasonableness. JCL Dec., ¶ 11-12.

25 ///

26
27 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the
Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized
terms used herein have the same meaning as those defined by the Agreement.

28 ² Currently Class Counsel’s actually incurred litigation expenses are \$17,907.30. Class Counsel will provide an updated
total at the time of hearing on this motion.

II. OVERVIEW OF THE LITIGATION

Defendants provide home remodeling services in the State of California, including San Diego County where Plaintiffs worked. This Action involves two separate sub-classes: employees that worked solely on a piece rate basis and hourly combination basis ("Non-Exempt Piece Rate Class") and employees that worked solely on an hourly basis ("Non-Exempt Hourly Class"). Non-Exempt Piece Rate Class and Non-Exempt Hourly Class are referred to collectively as "Class Members". Plaintiffs seek to represent class Members who are or previously were employed by Defendants during the Class Period, which is April 12, 2018, to December 31, 2023. At all times during their employment, Plaintiffs earned an hourly wage and were entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. JCL Dec., ¶ 13.

On February 18, 2022, Plaintiff Manuel Fimbres filed a Notice of Violations with the LWDA and served the same on Defendant. On April 12, 2022, Plaintiff Manuel Fimbres filed the original complaint in the San Diego Superior Court, Case Number 37-2022-00013690-CU-OE-CTL ("Class Action") alleging eight causes of action. On April 25, 2022, Plaintiff Manuel Fimbres filed the First Amended Complaint, which added a ninth cause of action for Violations of the Private Attorney General Act of 2004. JCL Dec., ¶ 14.

On July 1, 2022, Plaintiff Abens Ponce filed a Notice of Violations with the LWDA and served the same on Defendants. On November 14, 2023, the Parties filed a stipulation allowing Plaintiff Fimbres leave to file a Second Amended Complaint ("SAC"). The SAC adds Andy Dohrer, Ryan Houser, Abens Ponce, and Eliot Warner as Plaintiffs to the Action. JCL Dec., ¶ 16.

Plaintiffs commenced written discovery in May 2022. In anticipation of mediation, the Parties agreed to stay formal discovery and continue deadlines for class certification. JCL Dec., ¶ 18. The Parties agreed to informally produce additional documents and data points, including but not limited to, a sampling of the Class Members' time and payroll data, and pertinent written wage and hour policies. Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. JCL Dec., ¶ 19.

On September 7, 2023, the Parties participated in a full day mediation with Steven Serratore, Esq., an experienced mediator of class and PAGA actions and reached a settlement agreement and

signed a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 20.

On December 15, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶¶ 4, 21. Shortly thereafter, on February 5, 2024, the Settlement Administrator mailed Notice Packets to all 730 Settlement Class members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. Agreement, ¶ L(7-8). In response, 100% of the Class Members are participating in the Settlement. Apex Dec., ¶ 13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved a Gross Settlement Amount of \$1,363,126.56. The Gross Settlement Amount is all-in with no reversion to Defendants. Agreement, ¶ III(A)(1). The Net Settlement Amount shall be used for payment of all Individual Settlement Payments to satisfy all Released Class Claims. The Settlement Administrator will calculate Individual Settlement Payments as agreed to in the Agreement and currently estimates the average Individual Settlement Payment is **\$1,046.92**, the highest Individual Settlement Payment is **\$10,738.02**, and the lowest Individual Settlement Payment is **\$37.03**. Apex Dec., ¶ 15. In exchange for the valuable consideration, Plaintiffs and the Settlement Class Members on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release the Released Parties from the Released Class Claims for the Class Period. Agreement, ¶ III(B).

After this Court granted Preliminary Approval of the Agreement on December 15, 2023, Defendant produced the Class Data to the Settlement Administrator. Apex Dec., ¶ 5. Upon production of the Class Data to the Settlement Administrator, it was discovered that the actual number of Class Members increased from 689 to 730 Class Members and the actual number of Workweeks worked by Class Members during the Class Period increased to 23,990. Apex Dec., ¶ 14. The increased number of Class Members and Workweeks triggered an escalator provision in the Settlement Agreement, thereby increasing the Gross Settlement Amount by \$13,126.56 dollars. The new Gross Settlement Amount in this matter is **\$1,363,126.56**. Apex Dec., ¶ 14.

Apex Class Action LLC was appointed as the Settlement Administrator for the class. The

Settlement Administration Cost is \$12,000.00 and will be paid from the Gross Settlement Amount. Agreement, ¶ III(M)(12).

Subject to Court approval, Class Counsel shall seek Attorneys' Fees and Expenses in the amount of \$484,375.52 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at least \$454,375.52 and up to \$30,000.00 for actually incurred litigation expenses. Agreement, ¶ III(M)(10).

Subject to Court approval, the Agreement provides for a Service Award in the amount of \$52,500.00, \$10,000 for each Plaintiff Andy Dohrer, Ryan Houser, Abens Ponce, and Eliot Warner and \$12,500 for Plaintiff Manuel Fimbres in consideration of their time, risk, and efforts as the Class Representatives on behalf of the Settlement Class. Agreement, ¶¶ I(N), III(M)(9).

As set forth in the Agreement, \$50,000.00 of the Gross Settlement Amount has been allocated for civil penalties under the PAGA ("PAGA Penalties"). Seventy-Five percent of the PAGA Penalties will be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The Settlement Administrator shall distribute the remaining 25% of the PAGA Penalties to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement, ¶ III(M)(11).

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. Given the complexities of this case, the defenses asserted, and the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 22-31.

IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS

Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran. v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

"[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) citing *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The

1 court must decide whether the proposed settlement falls within the range of reasonable settlements,
2 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
3 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
4 *Computer*, 91 Cal.App.4th 224, 246 (2001). In *Wershba*, appellants argued that the settlement was too
5 low given the “clear” liability, however, the Court rejected this argument and held that “the merits of
6 the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,
7 *supra*, at 246; see also *7-Eleven, supra*, at 1150. In these cases, Courts have repeatedly emphasized that
8 there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91
9 Cal.App.4th at 245. The presumption of fairness exists where: (1) investigation and discovery are
10 sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm’s-
11 length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
12 small. *Dunk*, 48 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed.
13 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

14 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

15 The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*
16 *Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); see also *Officers for Justice v. Civil Service Com'n*, 688
17 F.2d 615, 625 (9th Cir. 1982). The purpose of the requirement is "the protection of those class members,
18 including the named plaintiffs, whose rights may not have been given due regard by the negotiating
19 parties." *Dunk, supra*, at 1801.

20 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
21 *Fargo Bank*, 220 Cal.App.3d 1117, 1138 (1990). “The well-recognized factors that the trial court should
22 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of
23 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
24 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
25 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
26 governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]”
27 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008); see also *Munoz v. BCI Coca-Cola*
28 *Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 408 (2010).

1 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
2 Due regard should be given to what is otherwise a private consensual agreement between the parties.
3 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement
4 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
5 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the
6 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
7 approximations and rough justice.' [Citation omitted.]” *Id.* These factors are analyzed seriatim below
8 and all support final approval of the class action settlement before this Court.

9 **A. Class Counsel Conducted a Thorough Investigation.**

10 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
11 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
12 assessed the value of the class claims using data and documents provided by Defendants through
13 informal discovery. Class Counsel obtained time, payroll, and policy records for the Class Members,
14 aggregate workweek and pay period data, and copies of applicable handbooks containing, *inter alia*,
15 compensation, timekeeping, and meal and rest period policies. Class Counsel retained BCG to analyze
16 Defendants’ time and payroll data to formulate damage models estimating Defendants’ liability
17 exposure. Class Counsel’s investigation, research, experience, and damage model informed and guided
18 the mediated negotiations that resulted in this settlement. JCL Dec., ¶ 24-31.

19 **B. The Parties Settled at Mediation.**

20 The Settlement is the product of a mediation session and subsequent negotiations over the terms
21 of the Settlement. The negotiations were adversarial, conducted at arms-length and tempered by the
22 efforts of both sides to serve the interests of their clients. JCL Dec., ¶ 32-33.

23 **C. Class Counsel is Experienced in Similar Litigation.**

24 Class Counsel in this matter has extensive class action experience in multiple fields and has
25 represented tens of thousands of persons in class actions. Class Counsel’s experience is summarized
26 in their concurrently filed declarations and have concluded the settlement is fair, adequate, and
27 reasonable and in the best interests of the Class. JCL Dec., ¶¶ 34-40; Declaration of Shani O. Zakay
28 (“Zakay Dec.”) ¶ 3-4; Declaration of Kenneth Seligson (“Seligson Dec.”) ¶ 7-9.

1 **D. The Settlement Class Responded Positively to the Settlement.**

2 The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date,
3 none of the 730 members of the Settlement Class opted out of the Settlement. Moreover, there are zero
4 objections. Stated differently, 100% of the Settlement Class chose to participate in the Settlement.
5 JCL Dec., ¶ 10, 68; Apex Dec., ¶¶ 11-13.

6 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
7 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp.
8 2d 164, 175 (S.D.N.Y. 2000) Consequently, Class Counsel respectfully request the Court to follow the
9 unanimous approval of the Settlement Class and grant final approval of the Settlement.

10 **E. The Risk, Expense, Complexity and Duration of Further Litigation Favor**
11 **Settlement.**

12 Although Plaintiffs and Class Counsel believe that this case has merit, they recognized the
13 potential risks both sides would face if litigation of this action continued. JCL Dec., ¶ 42. As the
14 federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties
15 similar to those in this litigation:

16 ***“In light of the above-referenced uncertainty in the law, the risk, expense,***
17 ***complexity, and likely duration of further litigation likewise favors the***
18 ***settlement.*** Regardless of how this Court might have ruled on the merits of
19 the legal issues, the losing party likely would have appealed, and the parties
20 would have faced the expense and uncertainty of litigating an appeal. The
21 expense and possible duration of the litigation should be considered in
22 evaluating the reasonableness of [a] settlement.”

23 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
24 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
25 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
26 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
27 trial court to enter judgement in favor of the employer. Consequently, the uncertainty of obtaining
28 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 43.

 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
recognize that Defendants have factual and legal defenses that, if successful, would potentially defeat
or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can

1 drastically affect the value of Plaintiffs' claims and, in fact, already has. JCL Dec., ¶¶ 44. In a similar
2 wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS
3 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class action settlement and
4 explained:

5 **Plaintiffs may have a strong case, but the risks inherent in continued**
6 **litigation are great.** Defendants strongly deny liability for Plaintiffs'
7 principal claim that full-time Service Associates were misclassified as
8 exempt. In addition to the uncertainties raised by Defendants at the
9 preliminary stage regarding Plaintiffs' chance of success in this case,
10 Defendants notes that the question of an employer's duty to provide rest and
11 meal periods is an open one, signaling even less certainty for
12 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
13 **expected net recovery, after fees and other costs are deducted, appear**
14 **to be a reasonable compromise, in light of the risks of litigation.**

15 As recognized in a federal decision approving settlement of an overtime wage class action:

16 **The potential complexity and possible duration of trial also weigh in**
17 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
18 of proving damages, recognize the uncertainty of outcome, and believe
19 defendant would appeal in the event of adverse judgment. A post-judgment
20 appeal would require many years to resolve and delay payment to class
21 members. Plaintiffs believe the benefits of a guaranteed recovery today
22 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the
23 Court agrees, the actual recovery confers substantial benefits on the class
24 that outweigh the potential recovery through full adjudication.

25 *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009);

26 In sum, while other cases have approved class certification in wage and hour claims, class
27 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
28 Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v.*
Chrysler Corp., 150 F. 3d 1011, 1026 (9th Cir. 1998).

Plaintiffs and Class Counsel recognize the expense and length of a trial against Defendants
through possible appeals which could take another three years. In arriving at their informed belief that
the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk
inherent in complex actions such as this one. Class Counsel are also mindful of and recognize the
inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and

1 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
2 Plaintiffs and Class Counsel believe that the Settlement confers substantial monetary and non-monetary
3 benefits upon the Class. Based upon their evaluation, Class Representatives and Class Counsel have
4 determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair,
5 reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 45.

6 **F. The Gross Settlement Amount is Fair and Reasonable.**

7 The Gross Settlement Amount of \$1,363,126.56 in this case is fair and well within the range of
8 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement
9 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
10 various potential impediments to recovery. Class Counsel developed varied economic damages models
11 measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation.
12 The various models were informed by Class Counsel's investigation, including the analysis of a
13 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
14 process, Class Counsel projected a range of Defendants' liability exposure for the claims asserted on
15 behalf of the Settlement Class. The Gross Settlement Amount represents approximately 34% of
16 Defendants' realistic class-wide liability exposure for damages and statutory penalties, and
17 approximately 17% of Defendants' maximum *class-wide* realistic liability exposure for damages and
18 statutory penalties. JCL Dec., ¶ 46.

19 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
20 Court for the Northern District of California granted final approval in a wage and hour misclassification
21 action and found that the total settlement representing 10% of the estimated trial award was within the
22 "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454,
23 459 (9th Cir. 2000), the Ninth Circuit approved a settlement representing "roughly one-sixth of the
24 potential recovery." Given the amount of the settlement here as compared to potential value of the
25 claims, particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable.

26 The settlement provides significant relief to the Settlement Class Members. The average
27 settlement payment is approximately **\$1,046.92**, the highest is approximately **\$10,738.02**, and the
28 lowest is approximately **\$37.03**. Apex Dec., ¶ 15. This average net recovery is greater than many wage

1 and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v.*
2 *99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
3 approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
4 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
5 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
6 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately
7 \$90).

8 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
9 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
10 experienced counsel, the settlement is entitled to final approval. JCL Dec., ¶ 47.

11 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE**
12 **REASONABLE**

13 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of
14 the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*,
15 No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
16 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
17 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
18 in the range of zero to two percent of the total settlement).

19 Here, Plaintiffs and Defendants negotiated a good faith PAGA Penalties in the amount of
20 \$50,000.00 which is 3.7% of the Gross Settlement Amount. This amount falls well within the range of
21 approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$37,500.00) will be
22 paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA
23 Penalties (\$12,500.00) to be distributed to the Aggrieved Employees, which is within the range of
24 PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 48.

25 Further, on December 4, 2023, Class Counsel gave the LWDA notice of this Settlement and
26 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
27 the LWDA. On April 24, 2024, Plaintiffs gave the LWDA notice of this motion seeking final approval
28 of this settlement. JCL Dec., ¶¶ 5-6, 49. By not registering an objection with either Class Counsel or

the Court, the LWDA has accepted and approved of the proposed PAGA Penalties.

VII. CLASS COUNSEL’S REQUEST FOR FEES AND COSTS

As part of the settlement, the parties agreed to Attorneys’ Fees and Expenses of \$484,375.52, comprised of \$454,375.52 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to \$30,000.00 for reimbursement of actually incurred litigation expenses. The requested attorneys’ fee portion of the Attorneys’ Fees and Expenses is fair compensation and, respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming wage and hour litigation on a contingent basis. Further, the attorneys’ fee portion of the requested Attorneys’ Fees and Expenses are within the historically recognized range attorneys’ fees awarded in common fund class action settlements – between 25% and 50% – and is supported by Class Counsel’s lodestar cross-check with a reasonable 1.85 multiplier. That is well-below the 2.13 multiplier approved by the Supreme Court in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be performed, and within the recognized multiplier range of between 2 and 4³. Thus, the reasonableness of the requested Attorneys’ Fees and Expenses is confirmed by reference to the lodestar with a reasonable multiplier with significant additional work still to be performed. JCL Dec., ¶¶ 50-58.

A. Common Fund

Courts have long recognized that when class counsel’s efforts result in the creation of a common fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a reasonable attorney’s fee from the fund as a whole”); *Laffitte*, 1 Cal. 5th at 488-89 (common fund doctrine “long recognized” under California law). The common fund doctrine rests on the understanding that attorneys should normally be paid by their clients and that, unless attorneys’ fees are paid out of the common fund, those who benefit from the fund will be “unjustly enriched.” *Boeing*, 444 U.S. at 478.

³ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with 2 multiplier); *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 255 (2001) (“multipliers can range from 2 to 4 or even higher.”); *In re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as “fair and reasonable”); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved range of 2 to 4).

1 As noted above, in *Laffitte*, the California Supreme Court upheld the trial court's award of
2 33.33% of the settlement amount of \$19 million dollars with a 2.13 multiplier and affirmed that
3 "empirical studies show the percentage method with a lodestar cross-check is the most prevalent form
4 of fee method in practice." *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded
5 between 25% and 50% of the common fund as attorneys' fees class action settlements. *In re Warner*
6 *Communications*, 618 F.Supp. 735, 749-50 (S.D.N.Y 1985).

7 Here, the fairest way to calculate a reasonable fee when contingency-fee litigation has produced
8 a fixed settlement amount for the Settlement Class Members is by awarding Settlement Class Counsel
9 a percentage of the total settlement sum. *See, e.g., In re Bluetooth Headset Products Liab. Litig.*, 654
10 F.3d 935, 942 (9th Cir. 2011). More importantly, a fee award under the common fund method here
11 would achieve the two underlying goals of the common fund doctrine by: (1) equitably requiring the
12 beneficiaries of the common fund to pay their pro rata share of fees incurred in creating the fund; and
13 (2) providing an incentive to attract competent counsel to handle wage and hour class actions, which
14 California courts recognize as a fundamental tool to ensure the effective enforcement of the Labor Code
15 and minimum labor standards. *See, e.g., Gentry v. Super. Ct.*, 42 Cal. 4th 443, 455-56 (2007) (overruled
16 on other grounds by *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014)
17 (emphasizing the indispensable value of private enforcement of California's wage-and-hour laws
18 through class actions).

19 The Agreement provides for payment of the Attorneys' Fees and Expenses from the common
20 fund. Accordingly, it is well within the Court's discretion to award fees to Class Counsel under the
21 common fund doctrine. Class Counsel requests attorneys' fees in the amount of \$454,375.52
22 representing one-third of the Gross Settlement Amount. Class Counsel's request is consistent with
23 many fee awards in similar wage and hour class actions. Moreover, the requested attorneys' fee award
24 is in the middle of historically recognized range of attorneys' fees awarded in common fund settlements.
25 JCL Dec., ¶¶ 58-60. The attorneys' fee portion of the Attorneys' Fees and Expenses request should be
26 awarded based upon the Gross Settlement Amount in accordance with *Laffitte*, i.e., percentage of the
27 fund with a lodestar cross check. As further explained below, the reasonableness of the requested
28 \$454,375.52 attorneys' fee award is further supported by the lodestar cross-check. JCL Dec., ¶ 61.

1 **B. Class Counsels’ Lodestar Supports the Requested Attorneys’ Fees**

2 Class Counsel’s lodestar to date is \$245,535.50 *exclusive of costs*, with significant work
3 remaining. JCL Dec., ¶¶ 50-53. Thus, Class Counsel’s fee request is equal to Class Counsel’s lodestar
4 with a 1.85 multiplier – below the 2.13 multiplier approved in *Laffitte* – is well within the recognized
5 multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS
6 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar
7 multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249
8 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of
9 1.7).

10 Because the Settlement in this case is a pure common fund case, and the percentage of the fund
11 is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based
12 upon the percentage of the common fund. Moreover, Class Counsel’s lodestar supports the requested
13 attorneys’ fees with a multiplier well within the recognized range reasonableness, and in fact, below
14 what the California Supreme Court approved in *Laffitte*. JCL Dec., ¶ 62.

15 Although no rigid formula applies, an analysis of each of the following “basic factors” that
16 California courts typically consider further supports the reasonableness of a fee request: **(1)** the result
17 class counsel obtained; **(2)** the time and labor required of the attorneys; **(3)** the contingent nature of the
18 case and the delay in payment to class counsel; **(4)** the extent to which the nature of the litigation
19 precluded other employment by class counsel; **(5)** the experience, reputation, and ability of the attorneys
20 who performed the services, the skill they displayed in the litigation, and the novelty, complexity and
21 difficulty of the case; and **(6)** the informed consent of the clients to the fee agreement. *Serrano v. Priest*,
22 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810 n.2. Those factors support
23 Class Counsel’s request and are addressed in more detail in Counsel’s declarations submitted
24 concurrently herewith. In short: **(1)** Considering the issues presented in the case, the Gross Settlement
25 Amount of \$1,363,126.56 is an excellent result for the Settlement Class, **(2)** Collectively, Class Counsel
26 worked hard on this case and, expended approximately 491.86 hours in the prosecution of this litigation
27 in the nearly two years since it was filed for a total lodestar of \$245,535.50, **(3)** Class Counsel undertook
28 this litigation on a contingent-fee basis, assuming a significant risk that the litigation would yield no

1 recovery after many years of work, (4) Class Counsel negotiated a one-third contingency fee
2 arrangement, which is a reasonable arrangement to obtain competent counsel in the marketplace for
3 representation in wage and hour class actions of this nature, and it is only equitable that Settlement
4 Class who share in the excellent results achieved by this Settlement bear their pro rata share of the
5 attorney's fees award to Class Counsel, (5) Class Counsel possesses significant experience litigating
6 complex wage and hour class actions and the way this Settlement was achieved is demonstrative of the
7 highly efficient way this litigation was managed and resolved (*See* Class Counsel's declarations for a
8 detailed outline of their skills and experience), and (6) Class Counsel's hourly rates are set forth in the
9 concurrently filed declarations of Jean-Claude Lapuyade, Esq., Shani Zakay, Esq., and Kenneth
10 Seligson, Esq. are well within the range of rates billed by comparable attorneys in this market and
11 reasonably compare with rates approved by other trial courts in wage and hour class action litigation.
12 JCL Dec., ¶¶ 62-77; Zakay Dec., ¶ 5-7; Seligson Dec ¶¶ 2-4.

13 **C. Class Counsel's Costs**

14 Moreover, common fund fee and expense awards include counsel's incurred expenses because
15 those who benefit from their effort should share in the cost. *See Rider v. City of San Diego*, 11 Cal.
16 App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is
17 whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See*
18 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

19 As of the date of this filing, Class Counsel has incurred a total of \$17,907.30 litigating this action.
20 All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to paying
21 clients including the following: filing fees; copying; postage; factual; mediation fees; and expert costs,
22 which were all incurred during, and were necessary for the successful prosecution of, the litigation and,
23 therefore, should be reimbursed. JCL Dec. ¶¶ 7, 78-80; Zakay Dec., ¶¶ 8-9; Seligson Dec ¶¶ 2.

24 **D. Plaintiffs' Service Awards Are Reasonable and Should be Approved**

25 Courts routinely approve service awards to compensate named plaintiffs for the services they
26 provide and the risks they incur during the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th
27 715, 726 (2004) The factors courts use in determining the amount of service awards include: (1) a
28 comparison between the service awards and the range of monetary recovery available to the class; (2)

1 time and effort put into the litigation; (3) whether the litigation will further the public policy underlying
2 the statutory scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175
3 Cal.App.4th 785, 804-805 (2009).

4 Regarding the amount of the requested award, courts frequently approve awards of \$10,000.00
5 or more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Service Award to
6 Plaintiff Manuel Fimbres for \$12,500.00, and Andy Dohrer, Ryan Houser, Abens Ponce, and Eliot
7 Warner for \$10,000.00 each is reasonable by reference to the amounts that California courts (both
8 federal and state) have repeatedly awarded in similar class action settlements. Further, the unanimous
9 consent by the Class Members favors the Court’s approval of the requested Service Award. Equally
10 important, the time, effort, and services provided to the Settlement Class justifies the requested Service
11 Award. The Class Representatives performed their duties to the Settlement Class admirably. Plaintiffs’
12 work is summarized in their declarations filed concurrently herewith. Plaintiffs assumed the serious
13 risk of liability for Defendants’ costs and potentially fees if the case was unsuccessful. Nevertheless,
14 Plaintiffs knowingly and voluntarily undertook the risk to vindicate the rights of the Settlement Class.
15 Manuel Fimbres (“Fimbres Dec.”) ¶ 1-12; Andy Dohrer (“Dohrer Dec.”) ¶ 1-12; Ryan Houser (“Houser
16 Dec.”) ¶ 1-12; Abens Ponce (“Ponce Dec.”) ¶ 1-12; Eliot Warner (“Warner Dec.”) ¶ 1-12; JCL Dec., ¶
17 81-85.

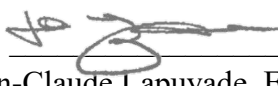
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1 **VIII. CONCLUSION**

2 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness
3 established in California law and should therefore be finally approved as fair, reasonable, and adequate
4 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on the
5 foregoing, Class Counsel respectfully requests approval of the Attorneys' Fees and Expenses payment
6 in the amount of \$484,375.52, comprised of (1) \$454,375.52 as compensation for attorneys' fees (one-
7 third of the Gross Settlement Amount of \$1,363,126.56) and (2) litigation expenses up to \$30,000.00 as
8 supported by Class Counsel's billing records. Class Counsel and the Class Representatives also
9 respectfully request approval of the requested Service Awards in the amount of \$52,500.00, \$12,500.00
10 for Plaintiff Manuel Fimbres, and \$10,000.00 for each Plaintiff, Andy Dohrer, Ryan Houser, Abens
11 Ponce, and Eliot Warner.

12
13 Dated: April 24, 2024

JCL LAW FIRM, APC

14 By: 
15 Jean-Claude Lapuyade, Esq.
16 Attorneys for Plaintiff
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